

HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

and

HON'BLE SRI JUSTICE G.BHAVANI PRASAD

W.A.NO.145 OF 2006

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Between:

P.Geeta

..... Appellant

AND

The Commissioner & Director of School Education,

Andhra Pradesh, Hyderabad – cum- Chairman,

DIET CET – 2005 and 2 others.

.....Respondents

::JUDGMENT::

Counsel for the Appellant : Sri V.Jagapathi

Counsel for Respondents : G.P for School Education

Dated 13..2..2006

Per Sri G.S.Singhvi, CJ

This is the third round of litigation by the appellant who could not get admission in two years Diploma in Education (for short 'D.Ed').

In pursuance of notice issued by Regional Director of School Education, Hyderabad-cum-State Convenor, DIET CET-2005 (Respondent No.2), the appellant applied for Common Entrance Test being conducted for admission to two years D.Ed course. She gave her option for admission against the seats earmarked for Backward Class -'B' category (Tamil Medium). She secured 57th rank among the candidates of her category, but could not get admission because the total number of seats earmarked for Backward Class-B category candidates of Tamil Medium was

50.

Feeling aggrieved by the alleged denial of admission in the D.Ed course, the appellant filed W.P.No.26839 of 2005. The same was disposed of by the learned Single Judge vide his order dated 26.12.2005 with a direction to the respondents to examine whether any seat was available and whether the candidature of the appellant can be considered along with the other qualified candidates. The relevant extracts of that order are reproduced below:

“The petitioner claims that she belongs to BC-B category. She secured 57th rank in the entrance examination conducted for the purpose of selection of candidates to D.Ed., course (Tamil Medium). She was not selected either against general category of seats or those reserved in favour of BC-B candidates. Even assuming that a seat reserved for S.C. woman is vacant, the petitioner cannot claim admission against such a seat as of right. The respondents have to verify the list of qualified candidates and see whether any S.C. candidates are available. It is only when such a candidate is not available; the seat is to be kept open, for being filled up by other categories of candidates. Here the action would depend upon the contents of the relevant rules, viz., whether the seat must be treated as belonging to the open category or be made available to the other reserved categories. In the ordinary course of things, the seats among S.C. and S.T. categories are interchangeable. However, as observed earlier, much would depend upon the purport of the rules. This court is not in a position to form any opinion on these aspects, because of lack of proper material before it. The duration of the course itself is very short. The matter cannot be kept pending indefinitely.

For the foregoing reasons, the writ petition is disposed of directing the respondents to examine as to whether there exists any seat and, if so, whether the candidature of the petitioner can be considered along with other qualified candidates and thereafter fill the seat strictly in accordance with Rules of admission. This exercise shall be completed within a period of two weeks from the date of receipt of a copy of this order.”

In compliance of the direction given by the Court, respondent No.2 considered the appellant's claim for admission against one of the reserved seats but rejected the same vide his letter dated 2.1.2006 by observing that no seat was available in Backward Class-B category and the vacant seats earmarked for Scheduled Caste (female) candidates cannot be offered to her because ten Scheduled Caste (female)

candidates from ranks 370 to 407 were available for consideration for admission against the reserved seats earmarked for them. Respondent No. 2 further observed that the admission cannot be granted at this belated stage because the counseling procedure had been completed by the end of October, 2005.

On receipt of communication dated 2.1.2006, the appellant filed W.P.No.1620 of 2006 but could not persuade the learned Single Judge to entertain her claim. In the opinion of the learned Single Judge, the seat earmarked for Scheduled Caste (female) category cannot be offered to the appellant and that there was no justification to direct the respondents to grant mid term admission.

Sri V.Jagapathi, learned counsel for the appellant argued that the reasons assigned by respondent No.2 for refusing admission to the appellant as also the reasons assigned by the learned Single Judge for dismissing the writ petition are legally unsustainable and, therefore, the order under challenge and communication dated 2.1.2006 be quashed and a direction be issued to the respondents to admit the appellant to two years D.Ed Course. Learned counsel emphasized that even though the instructions issued by respondent No.2 for holding the Common Entrance Test do not provide for conversion of unfilled seats of one reserved category i.e. Scheduled Caste to other reserved category i.e. B.C.-B, the courts should, keeping in view the spirit with which the policy of reservation has been evolved, direct the respondents to admit the appellant against the seat earmarked for Scheduled Caste (female). He further argued that as on today, two seats are available in BC-B category and the appellant is entitled to be admitted against one of those seats as of right, notwithstanding the fact that the D.Ed course commenced some time in the month of October, 2005.

Learned Government Pleader for Education supported the order of the learned Single Judge and argued that in the absence of any statutory provision for conversion of the reserved seats earmarked for Scheduled Caste (female) into Backward Class-B category, the Court cannot issue a mandamus to respondents to admit the appellant against the seat earmarked for Scheduled Caste (female) candidates. He then argued that the Court may not entertain the appellant's request for admission at this belated stage because it will be impossible for her to complete the course.

We have considered the respective arguments/submissions and are inclined to

agree with the learned Government Pleader that the appellant is not entitled to be admitted to D.Ed course for the session 2005-07. Undisputedly, the merit secured by the appellant in the Common Entrance Test was not high enough which could enable her to get admission against the seats earmarked for Backward Class-B category. It is also not in dispute that all the candidates who were admitted against the reserved seats earmarked for Backward Class-B category on the basis of counseling held from July 2005-September 2005 were placed above the appellant in the merit list. Therefore, she cannot complain of discrimination in the process of admission.

Insofar as the alleged irregularities committed in the admissions of the candidates belonging to Backward Class-B category are concerned, we do not consider it necessary to delve on this issue because the appellant has not impleaded those candidates as party respondents who are alleged to have been admitted in violation of the merit rule and the instructions issued by respondent No.2.

The appellant's claim for admission against the seat earmarked for Scheduled Caste (female) deserves to be negated because,

- i. the appellant has not been able to show that under the policy framed by the respondents, an unfilled seat earmarked for one reserved category can be converted into another reserved category;
- ii. as on the last date of counseling, at least ten Scheduled Caste Female candidates were available for being considered for admission against the unfilled seats of that category. Therefore, even if there was a provision for conversion of the seats earmarked for one reserved category into another reserved category, the appellant could not have been admitted against the seats reserved for Scheduled Caste Female candidates ignoring the claims of other available eligible candidates of that category.

We are further of the view that at this belated stage, there is no warrant for judicial interdiction in the admission process and for issuance of a *mandamus* to the respondents to admit the appellant because she will not be able to complete the course. The Supreme Court consistently ruled against mid term admissions and deprecated the practice of granting any midterm admissions in medical courses as also engineering courses (See **Medical Council of India, Petitioner vs. Madhu**

Singh and Mridul Dhar vs. Union of India). In **Council of Homoeopathic System of Medicine, Punjab v. Suchitan**, the Supreme Court reversed the order passed by Punjab and Haryana High Court for grant of mid term admission to the candidate. Their Lordships took cognizance of the fact that as per Regulations, the candidate was required to undergo study for a particular duration in the first year of Diploma course and held that by according mid term admission, the High Court cannot jeopardize the scheme of examination.

No other point has been urged.

For the reasons mentioned above, the appeal is dismissed.

As a sequel to the dismissal of the appeal, the miscellaneous petition filed by the appellant for grant of interim relief is also dismissed.

G.S.SINGHVI, CJ

Dt.13.2.2006

G.BHAVANI PRASAD,J

Msv/vtv